

**Minutes of the Special Meeting of February 24, 2011**

Call to order and flag salute by Mayor Serio at 9:00 AM

Council Members Present: Langan, Bunting, Smallwood, Weistling, Carmean, Tingle, Serio

Council Members Absent: None

Others Present: Town Manager Abbott

**Mayor Serio** stated that the purpose of the meeting is to review the bids for the photovoltaic system.

**Approve minutes of Special Meeting of January 19, 2011**

Motion to approve – Council Member Smallwood

Second – Council Member Carmean

Discussion – Council Member Weistling requested clarification regarding reference to funding the HVAC project.

Minutes were changed as follows:

Mr. Abbott advised that he has had difficulty securing a bid for the HVAC project. The initial bid process did not result in any bids. The Delaware Energy Office provided the name of a firm who might be able to accomplish the project. That firm, Henderson Mechanical, has bid \$29,200 to include replacement of three (3) heat pumps. It does not include replacing water heating equipment. The grant is for \$20,000 but he has been advised by the grantor that **unused** funds from the successful Solar Panel Project grant may be used to fund the remaining amount **if needed. Mr. Abbott explained that unused funds from the solar panel grant could be used to pay the extra cost of the HVAC project. At no time will the amount of the two projects exceed the combined award the two grants.** Mr. Abbott requested Council's approval to award the contract.

Vote: 7-0

Minutes Approved

**Seasonal Businesses – Council Member Weistling**

Council Member Weistling advised that Building Official Schuchman has received requests to permit placing various types of mobile vendors on the Nichols lot. This lot is vacant but Johnson's Market has used the space for a farm produce stand with Town permission. The Town Ordinance, under use regulations, defines allowable uses. Full text of §160-5 Commercial Zone Section A is attached to these minutes. Mrs. Schuchman provided a definition of premises as being land the building upon it. Council Member Weistling asked Council's assistance.

**DISCUSSION**

Council Member Weistling provided history of the lot's use by Johnson's farm produce stand advising that, in 2009, then Town Solicitor Steen advised that the code appeared to permit more than one use per parcel. Denial of a permit could be appealed to the Board of Adjustments. Johnson's was treated as a farmer market and did not require a license but since that time, Johnson's expanded their product line and secured a license from the Town for sales. Mr. Weistling suggested that this could come before Charter and Ordinance at its next meeting and use the normal process for amending the Town Code. Mr. Weistling suggested that the Town continue to use the definition of premises as provided by Mrs. Schuchman; without this interpretation, other vacant lots in town might also be used for mobile vendors.

Mayor Serio – food vendors must first secure a State health certificate and may need to provide restroom facilities for their staff.

Diane Tingle suggested that all permit requests be held until C&O has had a chance to review the Ordinance.

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Vicki Carmean noted that the door has been opened for other vendors and expressed concern that food cart sales will cause competition for existing restaurants. The Town should explore code from other towns and bring that information to the Charter and Ordinance Committee.

Mayor Serio advised that the Council should reach a consensus now and asked for comments from all council members.

Diane Tingle – wants more use boundaries set especially in regard to vacant vs. lot with a building. She suggested that farmers markets not be included.

Vicki Carmean – can see the pros and cons of the situation. She expressed concern about opening the lots up to use by temporary food businesses as they will provide competition to established restaurants but would like the farmers market to continue.

Bill Weistling – wants the premises definition to include an established building thus excluding a vacant lot from use.

Gene Langan – would like the vacant lots be available to a farmers market only.

Gardner Bunting – agreed with Council Member Langan.

Audrey Serio – noted that farmers markets are usually situated on municipal property not a commercial lot.

Todd Smallwood – agreed with Council Members Langan and Bunting that the lot would be used by farmers markets selling plants and produce. He does not want the town to take on the appearance of a flea market.

DISCUSSION continued:

Bill Weistling – advised that C&O will address the issue of the vacant lot (no building) to limit use to farmers markets selling their own products. Mayor Serio will check the State of Delaware regulations regarding farmers markets and what they can/cannot sell. Vicki Carmean suggested that a barbeque stand might sell a product that it raised and Gardner Bunting asked if prohibiting sales might affect service clubs' cart sales. Diane Tingle suggested that service organizations might apply for a special permit; Mayor Serio suggested adding "with Council approval" to the ordinance change. Charter and Ordinance will take the matter up at its next meeting on March 1, 2011 @9:30 AM.

#### **Non-agenda Item – Mayor Serio**

Mayor Serio announced that she has secured a draft copy of the Town Manager's contract and asked if council members wanted to review it individually. Changes suggested by the Town Solicitor are noted on the draft. Council Members should contact her after reviewing it.

#### **Review Proposal for Photovoltaic System**

Mayor Serio asked Town Manager Abbott to present a review of all the proposals received. Mr. Abbott advised that there appeared to be little difference among all the proposals except the cost. He noted that none of the bidders complied completely with the terms of the RFP. Based on his review one firm stands out from the rest.

DISCUSSION

Council members noted that only three (3) bidders offered work warranties, that they need to address "inverters" and the additional cost to provide trenching from the Public Works building to Town Hall. Council Members asked if the grant could be used to provide solar panels for the new Public Safety Building.

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Council Member Weistling asked what benefits the Town will receive after the installation of solar panels. Town Manager Abbott advised that he estimates that it will take four (4) years for the Town to see pay-off without additional credits. Mayor Serio noted that at some point in time all government buildings will have some green technology installed. There is no down-side to doing it now. Council Member Carmean agreed and Council Member Bunting believes the Town's actions set an example. Council Member Carmean questioned if excess funding from the grant could be used to install panels on the new Public Safety Building; Council Member Weistling suggested that Mr. Abbott speak with the contractor about revising the proposal to include a rough-in to accommodate installation of a solar panel in the future. In response to a question from Council Member Tingle, Mr. Abbott advised that the grant requires that work begin @9/15/2011.

Motion to authorize the Town Manager to continue discussions with a bidder on the Photovoltaic System – Council Member Tingle

Second – Council Member Carmean

Vote: 7-0

Motion approved

**Mayor Serio** - noted that there was no need at this time to adjourn into Executive Session.

**Council Member Weistling** - noted that the Public Safety Building is on the agenda for 2/25/2011. The engineering firm will soon have the drawings finalized and Council Members Weistling and Langan want to discuss a bid time-frame and a construction schedule.

**Mayor Serio** – advised that there will be a workshop regarding sidewalks. This will not be a formal public hearing; attendees will hear a presentation and provide feed-back to the Town. Comments will be reviewed in advance of a second workshop. Workshop is scheduled for Saturday, April 2, 2011 from 1PM to 3PM in Villalon Hall.

**Council Member Tingle** advised that she will not be able to attend the March 25, 2011 Regular Council Meeting and asked to be excused.

Motion to approve – Council Member Bunting

Second – Council Member Langan

Vote: 7-0

Council Member Tingle excused.

**Motion to adjourn** – Council Member Carmean

Second: Council Member Bunting

Vote: 7-0

Meeting adjourned at 10:05 AM.

Respectfully submitted,

Diane Tingle, Council Secretary

Transcribed by Agnes DiPietrantonio, Town Clerk

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[§ 160-5. Commercial Zone.](#)

A. Use regulations. Unless herein provided, no building or premises shall be used or any building or structure be hereafter erected, altered or repaired in the Commercial Zone except for one or more of the following uses:

(1) Any use permitted in the Residential Zone.

(2) Apartments. One apartment in a building used for other commercial purposes. Apartment buildings are prohibited.

**[Amended 9-23-2005]**

(3) Coffee shop having no more than 10 seats serving over the counter nonalcoholic beverages, bagels and/or pastries.

**[Amended 11-15-2002]**

(4) Antique shop.

(5) Vehicle filling or service station, subject to the following requirements:

(a) When such use abuts the side and/or rear line of a lot in any Residential Zone, a solid wall or substantial, solid fence five feet in height shall be constructed and maintained along said lot line.

(b) When such use occupies a corner lot, the ingress or egress driveways shall be located at least 20 feet from the intersection of the front and side street intersection of the front and side street lines of the lot, and such driveways shall not exceed 25 feet in width.

**[Amended 1-27-1995]**

(c) Gasoline pumps or other service appliances shall be located on the lot at least 10 feet behind the building limit line; and all service, storage or similar activities in connection with such use shall be conducted entirely within the premises.

(d) Light vehicle repair work may be done at a vehicle filling station (no body or fender repair permitted).

(e) A lot shall not be used for a vehicle filling station if it is within 300 feet of a public or private school, a public park or playground or a hospital.

(6) Editor's Note: Former Subsection A(6), Vehicle parking lot, commercial, was repealed 4-28-2000. Said ordinance also provided for the renumbering of former Subsections A(7) through A(60) as Subsections [A\(6\)](#) through [A\(59\)](#). Vehicle parts or supply store.

(7) Bakery.

(8) Bank or trust company.

(9) Barbershop.

(10) Beauty shop.

(11) Book, newspaper and magazine store, provided that no adult books or pornographic literature or material is offered for sale or viewing.

(12) Building supply store (retail) and warehouse.

(13) Business office.

(14) Church, convent or monastery.

(15) Confectioner, provided that goods prepared on the premises shall be offered for sale on the premises and at retail.

(16) Dairy products store.

(17) Delicatessen.

(18) Drugstore.

(19) Editor's Note: Former Subsection A(19), Educational institutions, private, was repealed 10-20-2000, and the remaining subsections were renumbered accordingly. Eleemosynary and philanthropic institutions.

(20) Express office.

(21) Florists.

(22) Fruit store.

(23) Funeral parlor or undertaking establishment.

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- (24) Furniture store.
- (25) Gift shop.
- (26) Grocery store.
- (27) Hand laundry.
- (28) Hardware store.
- (29) Hospital, nursing and care home, medical and dental clinics.
- (30) Motel/hotel.

**[Amended 9-23-2005]**

(31) Household appliance store, provided that there shall be no radio phonograph or other speaker located outside of such store or designated or arranged as an attention-calling device to attract passersby.

- (32) Jewelry store.
- (33) Laundromat or launderette.
- (34) Laundry pickup station for work to be done elsewhere.
- (35) Market, food (except live poultry).
- (36) Meat, fish or poultry store (except live poultry).
- (37) Newspaper publishing establishment and printing shop.
- (38) Photographic supply store.
- (39) Professional offices.
- (40) Public building.
- (41) Public park or playground.

(42) Public utility buildings and major structures, including radio broadcasting station, provided that no towers or any other obstructions are erected on-site.

- (43) Public water works or reservoir.
- (44) Radio and television broadcasting station, provided that no towers or obstructions are erected on-site.
- (45) Refreshment store.
- (46) Restaurant or eatery as herein defined, subject to the following requirements:

**[Amended 7-26-1996]**

(a) Definitions. As used in this subsection, the following terms shall have the meanings indicated:

**BAR**

A commercial establishment, not part of a restaurant, whose primary activity is the sale of alcoholic beverages to be consumed on the premises. "Bars" include taverns, taprooms, nightclubs, dance halls, dance clubs, lounges, pubs, cabarets, private clubs, bottle clubs and similar facilities serving alcoholic beverages.

**BAR AREA**

The floor space in any restaurant that is used primarily for the service or consumption of alcoholic beverages for patrons waiting to be seated in the permanent seated dining area. It shall include, but not be limited to, any bar counter and the contiguous floor and seating area where alcoholic beverages are dispensed or consumed, together with all other portions of the patron area except the permanent seated dining area, whether contiguous to the bar or not. A counter in a "bar area" where food is served is not considered part of the permanent seated dining area.

**EATERY**

A commercial establishment whose primary activity is carry-out food services. If indoor seating is provided, it shall be limited to a maximum of 35 patrons.

**OUTSIDE SERVICE AREA**

A porch, patio, deck or area of land or buildings which is not enclosed on all sides with permanent structural walls and roofing and which has a floor level no higher than three feet above ground level, is not more than 700 square feet in area and which is used for seated dining only in conjunction with a restaurant or eatery. No part of any outside service area may be located in any setback area and may not eliminate parking spaces to achieve sufficient space for outside service area.

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**[Amended 7-27-2007]**

**PATRON AREA**

The area of a restaurant open to the public as patrons and exclusive of kitchen, storage areas and rest rooms.

**PERMANENT SEATED DINING AREA**

The floor space in any restaurant where tables and chairs and/or booths are provided for serving complete meals to seated patrons. The floor space of any outside service area shall not be included as part of a restaurant's permanent seated dining area.

**[Amended 7-27-2007]**

**RESTAURANT**

A commercial establishment with a patron area of less than 4,000 square feet and which is regularly used and kept open for the purpose of serving complete meals, as referred to in the Delaware Code, to patrons for consideration and which has seating and tables for dining and suitable kitchen facilities connected therewith under the charge of a chef or cook. The service of only such foods as snacks, sandwiches, salads, pizza, hamburgers, etc. at anytime in the evening are not considered complete meals.

(b) Requirements.

**[Amended 7-27-2007]**

[1] No bar, as defined, shall be allowed in Fenwick Island.

[2] No bar area, as defined shall be allowed in any outside service area.

[3] Alcoholic beverages may not be served at an eatery.

[4] In-car or drive-through service may not be provided by an eatery.

[5] A restaurant may have a bar area as defined where stand-up consumption of alcoholic beverages for patrons waiting to be seated is allowed, provided that the number of patrons in the bar area does not exceed the Fire Marshal's occupancy limit for that area and such bar area is located on the same floor level as the permanent seated dining area.

[6] Stand-up consumption of alcoholic beverages is not allowed in the permanent seated dining area, including any outside service area.

[7] All tables and chairs in the permanent seated dining area of a restaurant shall be maintained and located in an accessible and usable configuration at all times and may not be temporarily moved so as to increase any bar area.

[8] Music or entertainment, live or recorded, shall not be allowed in any outside service area.

[9] Neither entertainment, except music, nor dancing may be offered in a restaurant or its bar area, either through advertisement or by providing a temporary or permanent dance floor.

[10] All windows and doors of any restaurant or bar area shall remain closed except for the passage of patrons when music is being played.

[11] A minimum of 85% of the patron area must be dedicated as a permanent seated dining area.

[12] A restaurant may not serve alcoholic beverages in the morning before 9:00 a.m. or in the evening later than 1:00 a.m. or later than the time when the offering of complete meals in the permanent seated dining area ends, whichever is earlier. Hours of operations for any restaurant or eatery outside service area shall be no earlier than 8:00 a.m. and no later than 11:00 p.m., including set-up and final clean-up. In the case of a restaurant or eatery that includes outside service area, such outside service may be suspended or revoked if there have been three or more cases during a calendar year of violations of any Town ordinances. Oral and written notice of each such violation will be given to the licensed restaurant or eatery owner. Such revocation may be immediate, deferred to the entire season for the following year, or both.

[13] No restaurant or eatery may operate without a valid certificate of compliance and establishment license as described in Chapter [100](#), Licensing.

(47) Shoe repair shop.

(48) Editor's Note: Former Subsection A(48), regarding dancing, music and trade schools, was repealed 10-20-2000, and the remaining subsections were renumbered accordingly. Sign painting shop.

(49) Swimming pools in connection with and on the same site as a motel or hotel.

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(50) Tailoring shop, including incidental dry-cleaning, dyeing.

(51) Tailor pressing and cleaning shop (including valet service), having not more than three pressing machines and one dry-cleaning unit.

(52) Taxicab stand.

(53) Telegraph or messenger service.

(54) Tennis courts.

(55) Townhouses:

**[Added 10-20-2000** Editor's Note: This ordinance also provided for the renumbering of the subsequent subsections.  
**; amended 9-23-2005]**

(a) The average minimum lot area per dwelling unit shall be 5,000 square feet.

(b) Lot frontage, measured at the front building limit line, for individual dwelling units of a townhouse may be reduced to not less than 16 feet.

(c) For the purpose of the side yard regulations, a townhouse building shall be considered as one building on one lot and shall have minimum side yards of seven feet. Any side yard adjacent to the line of a lot in a single-family Residential District shall not be less than 10 feet. Any side yard adjacent to a street shall be not less than 15 feet.

(d) Depth of front and rear yards of a townhouse must have an aggregate of not less than 40 feet. Front yards shall be not less than 25 feet. Distribution of the required aggregate of the front and rear yards total will be subject to site plan review and approval. Any rear yard adjacent to the line of a lot in a single-family Residential District shall be not less than 10 feet.

(e) Detached garages or carports shall not be permitted except as shown on the approved site plan, with specific approval given for same in site plan review.

(f) Unless otherwise restricted by district regulations, not more than four dwelling units shall be included in any one townhouse building, with no overall outside wall dimensions of more than 85 feet.

(g) Required off-street parking space of two spaces per family dwelling unit shall be provided on the lot of each dwelling unit or within an on-site parking area within the common area with approval subject to site plan review.

(h) No family unit shall be so designed or constructed that would locate any part of one family unit above another family unit.

(i) Any issue or item involving townhouses that is not specifically covered by § [160-5](#) shall be governed by § [160-4C](#).

(j) Commercial buildings and townhouses, as defined herein, may be constructed so as to extend over more than one lot area in which event the side yard requirements shall apply only to the perimeter of the building or the nearest building of the cluster to the adjacent side property line.

**[Added 7-26-1996 by Ord. No. 77]**

(k) A townhouse is defined as a single-family dwelling and may not be used for any other use which is not permitted in the Residential Zone.

(l) Floor area ratio. For a townhouse building, the maximum floor area ratio shall be 70%.

**[Added 6-23-2006]**

(56) Upholstering shop.

(57) Variety and dry goods store.

(58) Vegetable store.

(59) Fitness and exercise facility.

**[Added 11-15-2002]**

(60) Fire station, which may include sleeping and other living facilities for up to eight firefighters only.